

**JUL 27 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDO GONZALEZ-NOYOLA,  
aka Fernando Gonzalez-Loyola, aka  
Fernando Noyola Gonzales,

Defendant - Appellant.

No. 03-50599

D.C. No. CR-03-00154-DOC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
David O. Carter, District Judge, Presiding

Submitted June 6, 2006<sup>\*\*</sup>  
Pasadena, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Appellant Fernando Gonzalez-Noyola appeals his conviction and one-hundred month sentence for being an illegal alien found in the United States

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we remand pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc).

Gonzalez-Noyola claims the district court erred by declining to offer an entrapment-by-estoppel jury instruction. However, he did not adduce any evidence from which a reasonable trier of fact could conclude that the Border Patrol agents who purportedly dropped him off in San Diego, instead of executing his warrant of deportation, were authorized government officials empowered to advise him whether he could stay in this country legally. *See United States v. Brebner*, 951 F.2d 1017, 1027 (9th Cir. 1991). Therefore, the record of evidence could not rationally support an essential element of the entrapment-by-estoppel defense; the district court correctly declined to offer an instruction regarding such defense. *See id.* at 1024.

We order a limited *Ameline* remand because Gonzalez-Noyola was sentenced under the mandatory Guidelines regime and “it is not possible to reliably determine from the record whether the sentence imposed would have been materially different had the district court known the Guidelines were advisory.” *See Ameline*, 409 F.3d at 1084-85.

Conviction AFFIRMED. Sentence REMANDED.